Form No. J.(2)
Item No.7

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
HEARD ON: 01.09.2023

DELIVERED ON: 01.09.2023

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 805 of 2023
With
I.A. No. CAN 1 of 2023
+
I.A. No. CAN 2 of 2023

M/s. Bharat Pump House
Vs.
The State of West Bengal & Ors.

Appearance:-

Mr. P. K. Das
Mr. Indranil Banerjee
Mr. Subrata Mukherjee ....**for the appellant**

Mr. T.M. Siddique ....**for the State**

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the petitioner is directed against the order dated 1st May, 2023 passed in W.P.A. 6507 of 2023. The writ petition is still pending before the learned Single Bench. However, while entertaining the writ petition and directing the affidavits to be filed, the learned Single

Bench was not inclined to grant any interim order. This is why the appellant is before this Court praying for appropriate directions/orders.

2. With the consent of the learned advocates on either side, the writ petition is taken up along with this appeal for being disposed of by a common order.

3. The challenge in the writ petition is to a cancellation of registration granted in favour of the appellant by the respondent authorities. Show-cause notice dated 30th January, 2018 was issued alongwith mismatch of address in the trade license and that of the address given in the partnership deed. It is an admitted fact that the appellant did not file its response. Consequently, the registration stood cancelled by order dated 30th January, 2018. As rightly pointed out by the learned Government Counsel, there are multiple remedies available to the aggrieved dealer to seek for revocation of the order of cancellation of registration and in case, he is unsuccessful, there is also an appellate remedy provided under the Act. The appellant did not choose to avail those remedies but had filed the writ petition.

4. The learned advocate appearing for the appellant submitted that in terms of Rule 24 of the Central Goods and Services Tax Rules, 2017, which deals with migration of persons registered under the existing law, under sub-Rule (3) when particulars or information specified in sub-Rule (2) have either not ben furnished or not found to be correct or complete, the appropriate officer will be entitled to take action for cancellation of the provisional registration granted under sub-Rule (1) of Rule 24. It is submitted that under sub-Rule (3) of Rule 24, prior to taking any action for cancellation, the dealer is entitled to be served with the show-cause notice and after affording the person concerned a reasonable opportunity of being heard, an order can be

passed. It is the submission of the learned advocate appearing for the appellant that in the instant case, though the appellant did not file its response to the show-cause notice, the order of cancellation of the provisional registration has been done without granting an opportunity of being heard in person. Therefore, it is submitted that the order is in violation of principles of natural justice.

5. Further, it is submitted by the learned advocate appearing for the appellant that the appellant is ready and willing to pay the taxes and it may be permitted to file the returns.

6. We have heard the learned counsel on the above submission.

7. As noted above, the appellant did not file its response to the show-cause notice. Therefore, the authority cannot be faulted for proceeding *ex parte*. Nevertheless, while doing so, the authority ought to have informed the appellant and fixed the date for personal hearing after which he could have taken action. This being a mandate under Rule 24(3) of the said Rules, the same cannot be bypassed.

8. Therefore, we are of the view that the matter should be relegated back to the authority namely, the Commercial Tax Officer having jurisdiction to enable the appellant to file its response to the allegation in the show-cause notice and the authority shall afford an opportunity of personal hearing to the authorised representative of the appellant and thereafter proceed to decide the matter on merits and in accordance with law.

9. Needless to state that if the appellant is able to reconcile the mismatch pointed out in the show-cause notice, if there are no other legal impediment, the order of cancellation of the provisional registration can be

set aside and the registration can be restored to enable the appellant to file its returns, pay the taxes along with other statutory dues.

10. In the result, the appeal and the writ petition are allowed to the extent by setting aside the order of cancellation of the provisional registration dated 30th January, 2018 and the matter stands remanded to the Commercial Tax Officer having jurisdiction.

11. The appellant is directed to submit its response/reply to the allegations in the show-cause notice within 15 days from the date of receipt of server copy of this order, after which the said authority shall afford an opportunity of personal hearing and proceed to take a decision on merits and in accordance with law. In the interregnum, since the authority has already issued a notice in DRC-01 dated 4th March, 2023, the said authority namely, Deputy Commissioner of State Tax, Srirampur Charge is directed to keep in abeyance the said notice and proceed further after a decision is taken in terms of the above directions.

12. No costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)